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09/695,402	10/25/2000	Howard W. Fingerhut	BS00-189	2671

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WITHERS & KEYS FOR BELL SOUTH
P. O. BOX 71355
MARIETTA, GA 30007-1355

EXAMINER

DOAN, DUYEN MY

ART UNIT	PAPER NUMBER
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2152

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10/15/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/695,402	Applicant(s) FINGERHUT ET AL.	
	Examiner Duyen M. Doan	Art Unit 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-39, 41-52 and 54-87 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-39, 41-52 and 54-87 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 October 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/20/2007 has been entered. Claims 1-5,7-39,41-52,54-87 are amended for examination. Claims 6,40,53 are cancelled.

Response to Arguments

Applicant's arguments with respect to claims 1-5,7-39,41-52,54-87 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the prior art Wan does not teach, "congested state" read from the packet. The argument is persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Galand.

In response to applicant's argument that the prior art does not teach, "network entry point and exit point" examiner respectfully disagrees, throughout the applicant's disclosure, the only thing applicant talks about is the network entry point and exit point detected from the packet. However, applicant does not define or explain what is the entry point and exit point from the packet that the applicant is detecting. Applicant argues that Sharon is detecting the source and destination address from the packet in the process of monitoring the traffic in the network, and the destination and source address are different from the network entry point and exit point that applicant claimed. If the network entry point and network exit point are not destination address and source address from the packet, so what are they? Examiner would appreciate that applicant would explain what is the entry point and exit point in the packet that the applicant is detecting. If applicant cannot explain what are entry point and the exit point of the packet in the packet content, then it would raise the 112 1st non-enablement issue.

In response to applicant's argument that the prior art does not teach, "near real time", the argument is persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Galand.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5,7-39,41-52,54-87 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1,14,25,60,69,78,84 recite the limitation "the content". There are insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5,7-39,41-52,54-87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharon et al (us pat 6,137,782) (hereinafter Sharon) in view of Galand et al (us pat 6,424,624) (hereinafter Gal) and further in view of Messinger et al (us pat 6,687,750) (hereinafter Mes).

As regarding claim 1, Sharon discloses generating a traffic log at a first location within the network based upon detection of a packet (see Sharon col.3, lines 64-67; col.4, lines 1-4; col.7, lines 1-7, store the information detected from the network packet in database), the traffic log containing a plurality of values detected the plurality of values including a network entry point of the packet, and a network exit point of the packet (see Sharon col.3, lines 64-67; col.4, lines 1-4; col.7, lines 1-7; analyzed each packet and determine the source and destination address); transferring the traffic log from the first location to a second location (see Sharon col.8, lines 10-30, information from the packet store in a file, transfer that file to central management engine); storing the traffic log generated by the network at the second location (see Sharon col.8, lines 39-59, store the file); analyzing the network entry and exit points of the packet (see Sharon col.8, lines 10-30).

Sharon does not explicitly disclose wherein the packet state includes a congested state; creating a histogram file; analyzing the stored traffic log to determine the time of creation of the traffic log and updating the histogram file using at least the time of creation of the traffic log; wherein the histogram file is utilized to monitor network conditions in near real-time enabling the detection and correction of network overloads and congestion before network customers are affected.

Gal teaches the extracted information from the network packet and determine the congestion of the network (see Gal col.3, lines 14-16, lines 40-46, congestion is identified throughout the network and transferred by setting an indicator in the packet header); real time traffic (see Gal col.2, lines 22; col.5, lines 17-32).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Gal to the method of Sharon to determine the congestion state of the packet for the purpose of detecting congestion and flow control for low priority traffic with optimized cost efficiency (see Gal col.1, lines 7-11).

The combination of Sharon and Gal does not teach creating a histogram file; analyzing the stored traffic log to determine the time of creation of the traffic log and updating the histogram file using at least the time of creation of the traffic log; wherein the histogram file is utilized to monitor network conditions and enabling the detection and correction of network overloads and congestion before network customers are affected.

Mes discloses creating a histogram file (see Mes col.4, lines 12-19, bar charts, graph); analyzing the stored traffic log to determine the time of creation of the traffic log and the network entry and exit points of the packet (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52); and updating the histogram file using at least the time of creation of the traffic log (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19); wherein the histogram file is utilized to monitor network conditions in near real-time enabling the detection and correction of network overloads and congestion at one of a network node and a network node link before network customers are affected (the wherein clause merely states the result of the limitations in the claim adds nothing to the patentability or substance of the claim, for example, one person with ordinary skill in the art having a method as discloses by Sharon, Gal and Mes would use

this method for monitor network condition, correcting congestion before the user affected, the same method can be use to monitor the Qos or else is up to user what he/she want to use it for (see MPEP 2111).

It would have been obvious to one with ordinary skill in the art at the time the invention was made to combine the teaching of Mes to the method of Sharon-Gal to include the histogram file for the purpose of visualizing the display of network traffic information, allowing the administrator to rapidly obtain and assimilate substantial amount of information (see Mes col.1, lines 5-9, lines 57-67).

As regarding claim 2, Sharon-Gal-Mes discloses wherein the histogram file is a flat file, whereby direct and rapid access to stored data is effected (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally well to claim 2.

As regarding claim 3, Sharon-Gal-Mes discloses wherein two histogram files are created, a first histogram being representative of traffic being passed into the network and a second histogram being representative of the traffic being passed from the network (see Mescol.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19, if one can generate a histogram file, it is obvious to generate a second one or a third one base on the criteria set, in this case the ingress point and the egress point). The same motivation was utilized in claim 1 applied equally well to claim 3.

As regarding claim 4, Sharon-Gal-Mes discloses the histogram file is representative of traffic passing to a host connected to the entry or exit point (see Sharon col.7, lines 1-7; col.8, lines 10-30).

As regarding claim 5, Sharon-Gal-Mes discloses repeating steps (b) - (d) for at least a predetermined period (see Sharon col.3, lines 64-67; col.4, lines 1-4; col.7, lines 1-7).

As regarding claim 7, Sharon-Gal-Mes discloses wherein the histogram plots packets per minute versus time (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally well to claim 7.

As regarding claim 8, Sharon-Gal-Mes discloses broadcasting from a server computer data representative of the histogram to a client computer (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally well to claim 8.

As regarding claim 9, Sharon-Gal-Mes discloses wherein the network is a Mobitex network (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). (note: Mobiltex technology is a well-known packet data network).

As regarding claim 10, Sharon-Gal-Mes discloses displaying a histogram based on data in the histogram file (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally well to claim 10.

As regarding claim 11, Sharon-Gal-Mes discloses creating at least one histogram for each host of the network (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally well to claim 11.

As regarding claim 12, Sharon-Gal-Mes discloses selecting for display the at least one histogram for a particular host (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19). The same motivation was utilized in claim 1 applied equally well to claim 12.

As regarding claim 13, Sharon-Gal-Mes discloses monitoring a central location of the network for new traffic logs (see Mes col.1, lines 57-67; col.2, lines 1-37; col.3, lines 28-52, col.4, lines 6-19).

As regarding claim 14, the limitations of claim 14 are similar to limitations of rejected claim 1 above, Sharon further discloses determining a network path between the entry and exit points of the packet; determining whether the node falls along the network path (see Sharon col.9, lines 21-61; col.11, lines 51-67).

As regarding claims 15-24, the limitations of claims 15-24 are similar to limitations of claims 1-5, 7-13, therefor rejected for the same rationales as claims 1-5, 7-13.

As regarding claim 25, the limitations of claim 25 are similar to limitations of rejected claim 1 above, Sharon further discloses determine whether a link falls along the network path; determining a number of bytes carried by the packet associated with the traffic log (see Sharon col.9, lines 21-61; col.11, lines 51-67).

As regarding claims 26-35, the limitations are similar to limitations of claims 2-5, 7-13, therefore rejected for the same rationales as claims 2-5, 7-13.

As regarding claim 36, the limitations of claim 25 are similar to limitations of rejected claim 1 above; Mes further discloses deleting the traffic log (see Mes col.3, lines 28-52, delete the file at the administrator discretion). The same motivation was utilized in claim 1 applied equally well to claim 36.

As regarding claims 37-39,41-42, the limitations are similar to limitations of claims 2-5, 7-13, therefore rejected for the same rationales as claims 2-5, 7-13.

As regarding claims 43-48, the limitations are similar to limitations of claims 14-24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 49-52,54-59, the limitations are similar to limitations of claims 1-5,7-13, therefore rejected for the same rationales as claims 1-5,7-13.

As regarding claims 60-68, the limitations are similar to limitations of claims 14-24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 69-77, the limitations are similar to limitations of claims 14-24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 78-83, the limitations are similar to limitations of claims 14-24, therefore rejected for the same rationales as claims 14-24.

As regarding claims 84-87, the limitations are similar to limitations of claims 14-24, therefore rejected for the same rationales as claims 14-24.

Examiner's Note:

Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within

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the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

In the case of amending the claimed invention, Applicant is respectfully requested to indicate the portion(s) of the specification which dictate(s) the structure relied on for proper interpretation and also to verify and ascertain the metes and bounds of the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duyen M. Doan whose telephone number is (571) 272-4226. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on (571) 272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Examiner
Duyen Doan
Art unit 2152

Handwritten signature of Duyen Doan, consisting of a stylized 'D' followed by a cursive 'M' and a final flourish.